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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Filed
DIVISION FOUR

In re ANGEL L. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D. L.,

Defendant and Appellant.

B243188

(Los Angeles County
Super. Ct. No. CK588507)

APPEAL from orders of the Superior Court of Los Angeles County,
Jacqueline H. Lewis, Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Tracey F. Dodds, Principal Deputy County Counsel for Plaintiff and Respondent.

This is a mother's appeal from court orders concerning her two minor children. The mother is D. L. (referred to here as Mother), and the children are Angel L. (born in December 2000) and L. O. (born in July 2002). She appeals from orders granting de facto parent status to the paternal grandmother, Blanca O. (referred to here as Grandmother), and placing the children with her.¹ Only Mother and Department of Children and Family Services (DCFS) are parties to this appeal; neither father, Grandmother nor the children have filed briefing to this court.

FACTUAL AND PROCEDURAL SUMMARY

Previously, Jose O., the biological father of the children (referred to here as Father) had sole legal custody of the children pursuant to family court orders, subject to monitored visitation by Mother. Father wished to move to Houston, Texas, where Grandmother resided, and to take the children with him. His request to take the children out of state was denied in August 2008. Notwithstanding this ruling and an order that Father not take the children out of state, in 2009 he took them to Houston, where they resided with Grandmother for a period of about eight months. (Apparently, from July 2009 to February 2010). Mother contacted California authorities, who ultimately located the children and returned them to California.

In her briefing on appeal, Mother's counsel repeatedly refers to this taking as a "kidnapping," and DCFS refers to it as an "abduction". DCFS argues that while Father's conduct violated a court order, he did have sole legal custody of the children at the time he moved them to Grandmother's home in Houston. However characterized, his doing so was a flagrant violation of an indisputably valid court order.

Mother argues that the children did not attend school while in Houston and, citing an investigator's report, asserts that when returned they appeared "malnourished,

¹ There was a previous appeal in this dependency case, number B237634, decided in our opinion filed in October 2012. We granted Mother's request to take judicial notice of the record on appeal in that case.

underweight and sick.” But the report of the District Attorney’s investigator states that the children were attending school in Houston.

Upon the return of the children to California, physical custody was transferred to Mother, with Father to have limited, monitored visitation. In July 2011, Father again abducted the children, this time from school. He was arrested, and dependency proceedings were initiated.

The children were placed in foster care with Joanna P. Unification services were ordered. The record reflects that Father was suffering from mental illness, which appears to have grown more severe with time. Both parties to this appeal acknowledge Father’s mental problems [Mother and DCFS, referring to Father’s statement about a “treaty between me and Queen Elizabeth the Second”]. After this, the court found Father not competent to represent himself, and appointed a guardian ad litem. Later, when the guardian represented that Father was capable of self-representation, the court allowed the guardian to withdraw. The court itself referred to “crazy things” Father stated to the children

The court received evidence of abuse by Mother and her husband: the children were slapped, hit on the buttocks with a hanger and a beaded belt and, by the husband, with vacuum tubes. On one occasion the husband pulled Angel by the shirt and spanked him on the back of his legs and, when Angel fell, Mother kicked him in the stomach and called him an idiot; Mother slapped the children every day.

The children did not want to live with Mother and her husband. As summarized by children’s counsel, they “really, really, really do not wish to return to their mother’s care.” Instead, they wanted to be with Grandmother in Texas.

Upon being informed that Grandmother was seeking de facto parent status and was willing to take custody of the children, the court noted that placement in Texas would require an I.C.P.C. evaluation (Interstate Compact on Placement of Children, Fam. Code, § 7900 et seq.). That was undertaken, resulting in the approval by Texas of

placement of the children with Grandmother, subject to supervision in that state by Texas authorities.

In the meantime, Mother was enrolled in substance abuse and other programs. She missed a number of tests but generally appeared to have done satisfactorily in these programs. Her visitations with the children also were appropriate.

The court sustained the amended jurisdictional petition, and set the case for dispositional hearing. Reports from the children's therapist also were received and reviewed. The court indicated that it wanted to hear from Grandmother at the dispositional hearing, although she could appear by telephone and it was not necessary that she travel to California from Texas.

Nevertheless, Grandmother did appear at the hearing. Mother and Father were not present, although they, and the children, were represented by counsel.

The following colloquy occurred:

"THE COURT: Can you tell me what you think [Father's problems] are?

"THE WITNESS: I don't talk to my son. I do not have communication with him because I didn't want any of this, all these problems for my grandchildren.

"THE COURT: When was the last time you had any contact with your son, Jose?

"THE WITNESS: Last month, when he was here, in court, he called me. He said he was in court. That's it.

"THE COURT: Okay. When was the last time you had a longer conversation with him?

"THE WITNESS: I have not had any.

"THE COURT: Okay. So what is it that you believe his issues are, ma'am?

"THE WITNESS: I think he has problems because he loves his children very much and something happened and he got confused, but I don't know what happened.

[¶] . . . [¶]

"THE COURT: [Ma'am], when you say, 'He got confused,' can you tell me about what you mean by that?

“THE WITNESS: Because I have heard that he has been saying things that are not correct.

“THE COURT: And where have you heard that from?

“THE WITNESS: Because when he was in court here the last time, he didn’t wait for the court.

“THE COURT: Who told you that he’s been saying things that are not true?

“THE WITNESS: Because of the things that he’s saying, for example, the last time that I came here, I was told they mentioned to me that he’s talking about Queen Elizabeth, and for me, this is not normal.

“THE COURT: Ma’am, have you ever heard him talk about Queen Elizabeth before?

“THE WITNESS: Not with me.

“THE COURT: Ma’am, and I might be confused, so I apologize if I am, but when he had taken the boys from their mother about a year or so ago now, didn’t he spend time with you in Texas with the boys?

“THE WITNESS: He lived with me 8 months.

“THE COURT: And during those months, did you find him to be normal?

“THE WITNESS: For me, yes. With me, he put the kids in school, he talked to the lady, [D. L.], and the children talked to [D. L.].

“THE COURT: I’m sorry, ma’am, who is [D. L.] ?

“THE WITNESS: The Mother.

“THE COURT: Thank you.

“THE WITNESS: He put the car under his name, and he took notary license, and he was in front of my small business.

“THE COURT: Ma’am, during that period of time, did you know that he had taken the children against the court orders?

“THE WITNESS: He never told me that. If he had told me that, I would have sent him back because I did not want anything bad for my children. I would never have allowed it.

“THE COURT: Ma’am, if I were to place the children with you in Texas, and [Father were] to come to your house trying to get the children, what would you do?

“THE WITNESS: I would never allow it, number one. If I have to call the police, I’m going to follow your orders. I will follow the orders. I want to protect my children, give them stability to my children. Give them love and give them security for them, for them to have some faith and be good citizens.

“THE COURT: What do you think of their mother, . . . ?

“THE WITNESS: To me, when a person loves their children, she protects them, give[s] them love, gives them security, but the kids were not getting that.

“THE COURT: [Counsel for Department of Children and Family Services (DCFS)], do you have any questions?

“[DCFS COUNSEL]: No.

“THE COURT: [Counsel for minors]?

“[MINORS’ COUNSEL]:

“Q. Do you believe your son is a risk to his children?

“A. To tell the truth, I don’t want my son to have my grandchildren either.

“Q. Why not?

“A. I don’t see him stable. In one place for sure, for my children to have the security of remaining there.

“Q. If the children were placed with you, and your son came to your home, and he said, ‘It’s okay, Mom, the Judge said I can have the kids now,’ what would you do?

“A. No, I would not let him get close to the kids.

“Q. Would you call anyone?

“A. If he says, ‘I’m going to take them,’ then I call the police.

“Q. Would you also call the social worker if the case was still open?

“A. Oh, yeah. If I have to call her, yes.

“[MINORS’ COUNSEL]: Thank you.

“THE COURT: [Counsel for Father]

“[FATHER’S COUNSEL]: Just one question, your honor.

“Q. If the court orders monitored visitation for the father, would you follow that visitation schedule?

“THE WITNESS: If the Judge says it.

“[FATHER’S COUNSEL]: No further questions.

“THE COURT: [Counsel for Mother].

“[MOTHER’S COUNSEL]:

“Q. Do you recall talking to a social worker about this case in approximately July of last year?

“A. I’ve talked to so many people.

“Q. Do you remember ever telling the social worker that you assumed that your son Jose had cleared everything up in family law court because he told you that he did?

“A. No. I asked my son, ‘How did you bring the kids,’ and he told me, ‘Don’t worry, everything is okay.’ My only problem was I did not ask for the papers.

“Q. So he told you that he cleared everything up and you assumed that was good enough; is that correct?

“A. Well, I know my son is coming to court because of what he told me, so when he came over there, he put the kids in school. For me, it was normal. He talked to the lady, [Mother], and she talked to the kids, and she never talked to them again. Then I thought everything was normal.

“Q. Did you ever talk to the mother?

“A. No.

“Q. Do you even know what the father and mother talked about during their conversations?

“A. No.

“Q. So for you, for all you know, the mother could have been saying, ‘Why have you taken my kids, why did you take my kids – [’]

“[GRANDMOTHER’S COUNSEL] Objection, argumentative, your honor.

“THE COURT: Sustained.

“[MOTHER’S COUNSEL]: Did you make any efforts to contact the family law court and verify what father told you –

“[GRANDMOTHER’S COUNSEL]: Objection, argumentative, your honor.

“THE COURT: Sustained at this point.

“[MOTHER’S COUNSEL]: Q. Did you ever make any effort to contact mother?

“A. No.

“Q. Do you think that mother should ever have the kids returned to her?

“A. No.

“Q. Why?

“A. Why? Because my children have not had stability, have not had love, have not had respect and they have been abused.

“Q. Do you think that mother should visit with the children?

“A. No. I want total custody for my children to continue going forward.

“Q. Do you think that she should be able to talk to the children over the phone?

“A. If I adopt them, that is, if we adopt them, unless the judge orders it, only if the judge tells me.

“Q. But you don’t think that the judge should make that order, do you?

“[GRANDMOTHER’S COUNSEL]: Objection, relevance, argumentative.

“THE COURT: Sustained.

“[MOTHER’S COUNSEL]: Q. If the court makes an order for mother to have visits with the children, would you comply with that order?

“A. That’s why I say, I don’t want my children to have anymore trauma, neither from one side, nor the other. Unless the judge tells me otherwise, no, because what I want is adoption.

“[MOTHER’S COUNSEL]: I don’t have anymore questions. Are we dealing with the defacto motion separately?

“THE COURT: Yes.

“[MOTHER’S COUNSEL]: Okay.

“THE COURT: [Defacto parent’s counsel], do you have any questions?

“[GRANDMOTHER’S COUNSEL]: No. Only for the defacto motion, I’m sorry. I have to question her as to how her contact has been with the children, but I guess that’s a moot point.

“THE COURT: It is.

“THE COURT: Okay. Thank you, ma’am. If you want to stay there, that’s fine.

“[DCFS COUNSEL]: I just have a couple of questions, just a couple.

“THE COURT: Go ahead.

“[DCFS COUNSEL]: Q. Do you know how long the kids have been in foster care?

“A. The 28th of July, it was one year.”

The court then rendered its ruling:

“THE COURT: Thank you. I want to thank the grandmother again for coming out. The reality of this case is this: we are 7 weeks away from the 21F date, and I recently heard, read the reports, et cetera, in regards to mother’s progress here. It was clear from father leaving the courtroom last time and as well as his statements that his progress is minimal.

“I want both the grandmother and the uncle to understand that I think, ma’am, that your son has serious mental health issues that have been evidenced here in court. That being said, I have seen moments through this history of this case of lucidity by the father as well. I don’t know if that’s because he was on his medications when he wasn’t in jail or not. But at this point, the court is approving placement of the children with their grandmother in Texas. I don’t believe based on what I’ve seen in this case, unless there is some major change over [the] next 7 weeks, that the court is going to be returning these children to either parent. They are in desperate need of stability. They love their grandmother. They feel safe with their grandmother, and we need to figure out for these children where they’re going and that includes getting them some place stable so they can get put in school and have some stability because I think mother’s choices in regards to not only her actions but choosing her new partner over the children is very obvious.

“And father is, as I indicated, has some serious mental health issues and it’s this court’s job to make sure that we have stability for these kids. I am glad grandmother is here because I want her to understand that while I’m placing the children in your care and custody at this point, ma’am, that couple of things: number one, that there [are] still visitation orders for the mother and for the father, but I do not want you monitoring any of those visits, okay?

“So if your son, not this one here in court, but your other son, father of the children were to come to Texas he would need to hire a professional monitor to visit with the children; do you understand that?

“THE WITNESS: This is going to be for adoption, for me to adopt?

“THE COURT: The reality is this, ma’am: I’m not quite sure. [Your counsel] can explain a little bit more of the legal process. But right now, I can’t tell you for you to adopt. But frankly this case seems to be heading in that direction. But that adoption is not happening right now. Right now I’m just placing your grandchildren in your care. I will be allowing the mother to have phone contact with the children. And the father to have phone contact with the children. You need to be on the phone for any of that

contact. And if those conversations are upsetting to the children, or either mother or father say anything bad about each other to the children, or your son starts talking crazy, you are to terminate that phone call; do you understand that?

“THE WITNESS: Correct.

“THE COURT: And again, if father goes back to Texas [] to visit, then he is going to need to hire a professional monitor. Same thing for the mother. At this point –

“THE WITNESS: Okay. I have a question.

“THE COURT: Yes, ma’am.

“THE WITNESS: When they go over there, they are going to call me to let me know when?

“THE COURT: The social worker should call you to let you know when, but what I’m telling you is if I know your son at all, he’s going to show up on your doorstep without telling anybody. And it’s going to be left up to you to tell him he needs to leave and hire a professional monitor for any contact with the children. That means he can not stay in your house; do you understand that?

“THE WITNESS: Correct.

“[DCFS COUNSEL]: Your honor, given the history on the case and concerns raised by [Mother’s counsel], as well as minors’ counsel, it might be appropriate that the mother or father, mother and father would need to schedule the visit through the social worker.

“So if the social worker doesn’t call the grandmother and say that, you know, there’s a visit that needs to be scheduled for mother or father, they’ve been in contact with me, then maybe the grandmother should be ignoring father’s request. It should come through the department because this is going to create a big problem for –

“THE COURT: I agree with you. I’m just trying to warn her that it wouldn’t happen that way. She’ll open her door and father will be standing there.

“[DCFS COUNSEL]: Could you let her know, unless the department confirms there’s a visit to take place, that she would not allow it.

“THE COURT: So ma’am, if your son were to show up at your door, you need to call the social worker because the social worker will let you know of any approved visits by mother or father, okay?

“THE WITNESS: Correct.

“THE COURT: And if you have any questions, you call your attorney, [grandmother’s counsel], and she will find out what’s going on and let you know.

“[DCFS COUNSEL] You can contact the county attorney, mother’s attorney, minors’ counsel.

“THE WITNESS: If the social worker tells me the father or the mother are going there, and they want a visit, social worker is going to be there?

“THE COURT: Well, ma’am, no, because the social worker won’t be there in Texas, although perhaps they can make arrangements since -I-C-P-C- for a worker to monitor those visits but the worker will be in touch with you to tell you what’s going to happen, okay?

“THE WITNESS: Okay.

“THE COURT: I want the social worker to set up a set time for the mother to be able to call her children so that the grandmother knows the children have to be there and ready for that phone call. I’ll say the same thing for the father, but I don’t know if they’re going to be able to set that up for father, but certainly for mother, especially how the grandmother feels. I want to make sure that mother has [] set times to call the children, if the children are there to speak to her.

“[DCFS COUNSEL]: And there’s one hour difference in time.

“THE [WITNESS]: Two.

“THE COURT: I want the social worker to work out the specifics of that.

“[DCFS COUNSEL]: If the children want to call their mother, then the grandmother would obviously allow phone calls.

“THE COURT: Ma’am, if the children want to call either their mother or father, I would expect you to allow that.

“THE WITNESS: If they want to call them?

“THE COURT: Correct.

“THE WITNESS: If they want to call them for me, it’s fine.

“THE COURT: And the only thing I want you to understand is that I expect that you do not make any bad comments in front of the children or to the children about either their mother or their father, okay?

“THE WITNESS: I’m not going to waste my time on that. The kids need so much.”

The court then granted the de facto motion.

DISCUSSION

As both sides acknowledge, the trial orders in question are appealable. (Welf. & Inst. Code, §395.) (All further statutory citations are to that code.)

Mother’s first argument is that the trial court erred in granting Grandmother’s motion for de facto parent status.² The standard for that status is stated in California Rules of Court, rule 5.502(10): “‘De facto parent’ means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period.” The person applying for that status has the burden of demonstrating her or his qualifications by a preponderance of the evidence. (*In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.). The trial court’s decision is reviewed under the abuse of discretion standard, and, with respect to that exercise of discretion, reversal is warranted only if the decision exceeds the bounds of reason and results in a miscarriage of justice. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) The status is “ordinarily liberally granted on the theory that a court only benefits from having all

² The briefing occasionally refers to de facto status for both paternal grandparents. But the record shows that only Grandmother petitioned for that status, and only she received it.

relevant information on the best interests of the child. However, the determination depends on the specific circumstances of each case. [Citations.]” (*In re Bryan D.* (2011) 199 Cal.App.4th 127, 141.)

Mother argues these standards are not satisfied because the children lived with their grandparents in Texas only “for a short time”, and then only after they had been kidnapped to that state by Father. She also argues that Grandmother was aware of the kidnapped status of the children and concealed their whereabouts; they did not attend school in Texas, and Grandmother minimized Father’s abnormal behavior. As we have discussed, the record supports a finding that Grandmother was not aware that father had brought the children to her home in violation of a court order, and that she did not try to conceal their presence in her home, and, although disputed, there was evidence that the children did attend school while in Texas. Beyond that, the evidence demonstrates that Grandmother assumed the parental role during the two-thirds of a year the children were with her.

We conclude that the record supports the trial court’s ruling on de facto status.

Mother’s second argument is that the trial court abused its discretion in placing the children with Grandmother.

Here we focus on the best interests of the children. It is apparent from the remarks of the trial court which we have set out, that this was the lodestar of the trial court’s reasoning. There are times in dependency cases where the trial court is faced with difficult choices, none of which are perfect. This appears to be one of them. The trial court pointed out that, when it ruled, the case was just a few weeks short of the one-year period prescribed for the permanency hearing. (§ 366.21, subd. (f).) From what the court had before it at that time, it reasoned there was virtually no likelihood that the children would be reunited with Mother. Mother’s residence in California is a factor pointing to the minors’ placement in this state. But the court concluded it was outweighed by the disadvantages of a placement here, and the advantages of a loving, stable home in Texas. We cannot say this resolution was an abuse of discretion.

DISPOSITION

The orders appealed from are affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.